

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOUTAN PETROLEUM, INC.,) Case No. 07-5627 SC
)
Plaintiff,)
)
v.) ORDER GRANTING IN
) PART AND DENYING IN
) PART DEFENDANT'S
) MOTION FOR SUMMARY
CONOCOPHILLIPS COMPANY, a Texas) JUDGMENT
Corporation and DOES 1 through 10,)
Inclusive,)
)
Defendants.)
)
_____)

I. INTRODUCTION

This matter comes before the Court on the Motion for Summary Judgment ("Motion") filed by the defendant Conocophillips Company ("Defendant" or "Conoco"). Docket No. 94. The plaintiff Houtan Petroleum, Inc. ("Plaintiff" or "Houtan") submitted an Opposition and Conoco filed a Reply.¹ Docket Nos. 97, 100. For the following reasons, Conoco's Motion is GRANTED in part and DENIED in part.

¹ Houtan also submitted a Request for Judicial Notice pursuant to Federal Rule of Evidence 201. Docket No. 98. As Houtan states in the Request, however, all of the documents for which it seeks judicial notice have already been filed with this Court in this case and are already part of the record. Houtan's Request is therefore DENIED.

1 **II. BACKGROUND**²

2 The following facts are not in dispute. Houtan operated a
3 Union 76 gas station ("the Station") as a Conoco franchisee at the
4 same location for approximately 10 years. Compl., Docket No. 1,
5 at 1; Haddad Decl. ¶ 3.³ Conoco did not own the Station property
6 but instead leased it from a third-party, V.O. Limited Partners
7 ("V.O. Limited").⁴ Mathews Decl. ¶ 3.⁵ Conoco owns the
8 structures, equipment and improvements at the Station. Id.

9 The previous franchise agreement between Houtan and Conoco
10 was set to expire on August 31, 2007.⁶ Pellegrino Decl. ¶ 3.⁷ The
11 Master Lease between Conoco and V.O. Limited was set to expire on
12 October 31. Id. On July 6, Houtan and Conoco executed a new
13 franchise agreement ("the Franchise Agreement") that would begin

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16 ² This Court's Order Denying Plaintiff's Motion for
17 Preliminary Injunction, issued on November 16, 2007, exhaustively
18 detailed the facts of this case. Docket No. 18. The Court
19 therefore adopts and incorporates that Background section into this
20 Order, unless otherwise noted.

21 ³ Ed Haddad is the President of Houtan. His first
22 declaration was submitted with Houtan's Application for Preliminary
23 Injunction. Docket No. 5.

24 ⁴ This lease will be referred to as the Master Lease.

25 ⁵ Richard Mathews is an independent contractor for the Real
26 Estate Department of Conoco. His declaration was submitted with
27 Conoco's Response to Order to Show Cause on the Preliminary
28 Injunction. Docket No. 13.

⁶ Unless otherwise noted, all further dates are from 2007.

⁷ Dan Pellegrino is an Account Representative for Conoco.
His declaration was submitted with Conoco's Response. Docket No.
12.

1 September 1. Supp. Haddad Decl., Docket No. 32, Ex. A.⁸ The
2 Franchise Agreement was to be for a term of three years, expiring
3 on August 31, 2010. Resp. to Order to Show Cause, Docket No. 11,
4 at 3. The Franchise Agreement was executed, however, with the
5 understanding by both Houtan and Conoco that Conoco's Master Lease
6 for the Station property was set to expire on October 31, just two
7 months after the new Franchise Agreement was set to begin. Id. at
8 2. Thus, if Conoco was unable to renew the Master Lease with V.O.
9 Limited, the Franchise Agreement would terminate, as Conoco would
10 lose any right to occupy or sublease the Station. Pellegrino
11 Decl. ¶ 3. As Pellegrino stated: "In the event ConcoPhillips was
12 unable to renew its underlying lease [the Master Lease] of the
13 Station property, there was obviously no way it would be able to
14 continue to sublease the Station to Houtan Petroleum.
15 ConocoPhillips had no further right to renew or extend the
16 underlying property lease." Id.

17 Not only did Conoco explain this situation to Houtan as early
18 as May, but the Agreement itself, which was executed on July 6,
19 contained express language putting Houtan on notice that Conoco's
20 inability to renew the Master Lease with V.O. Limited would
21 necessarily result in termination of the Agreement. The Agreement
22 states, in part:

23 There is a possibility that the term of
24 the underlying lease [the Master Lease]
 to the Station might expire and not be

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26 ⁸ Although Haddad states in his declaration that the
27 Agreement was executed on March 30, the dates contained in the
actual agreement all reflect that it was executed on July 6. See
Supp. Haddad Decl. Ex. A at 80.

1 renewed upon the underlying lease's
2 expiration date. DEALER [Houtan] hereby
3 acknowledges CONOCOPHILLIPS' disclosure
4 to DEALER that this Agreement and the
5 Station herein are subject to all terms
6 and conditions of an underlying lease
7 held by CONOCOPHILLIPS in the property
8 and premises, which underlying lease
9 expires on October 31, 2007 and that such
10 underlying lease may expire and may not
11 be renewed during the Term of this
12 Agreement. Thereby, the DEALER [Houtan]
13 is hereby on notice that this Agreement
14 is hereby terminated on the date the
15 underlying lease expires

16 Supp. Haddad Decl. Ex. A at 63 (emphasis in original). Houtan
17 acknowledged this language in the Agreement by placing initials
18 immediately following the above-cited language. See id. In
19 addition, Conoco, on several occasions, verbally advised Houtan of
20 the ramifications of nonrenewal of the Master Lease. See
21 Pellegrino Decl. ¶ 4 (stating "Throughout 2007, I explained all of
22 this to Mr. Hadad [sic] in numerous conversations during routine
23 meetings and visits to the Station. Mr. Hadad [sic] told me that
24 Houtan Petroleum still wanted to continue its franchise
25 relationship with Conoco"). With this understanding, the
26 parties executed the Franchise Agreement on July 6. Supp. Haddad
27 Decl. Ex. A at 80.

28 The Master Lease between Conoco and V.O. Limited for the
Station property was initially for a 25 year term, beginning March
1, 1966, and expiring February 28, 1991. Mathews Decl. ¶ 4. A
subsequent modification extended the expiration date to October
31, 2002, and granted Conoco an option for an additional five year
term. Id. Conoco exercised that option and the Master Lease

1 expired October 31, 2007. Id. Conoco has submitted evidence
2 indicating that it made several attempts to renew or extend the
3 Master Lease beyond the October 31 date. Id. ¶ 5. According to a
4 sworn declaration submitted by Conoco, V.O. Limited never provided
5 a substantive response to Conoco's request to extend the Master
6 Lease and V.O. Limited eventually stopped responding to Conoco's
7 communications. Id. On September 17, Conoco advised V.O. Limited
8 that if V.O. did not respond by September 21 to Conoco's request
9 to extend the Master Lease, Conoco would consider such silence a
10 rejection. Id. V.O. Limited did not respond to this letter. Id.

11 On September 18, Conoco informed Houtan in writing that it
12 would be terminating the Franchise Agreement effective October 31.
13 Supp. Haddad Decl. Ex. B. The letter stated that the reason
14 Conoco was terminating the Franchise Agreement was because of
15 Conoco's inability to renew the Master Lease with V.O. Limited.
16 Id. On October 16, Houtan entered into an agreement with V.O.
17 Limited to lease the Station property beginning November 1, the
18 day after Conoco's Master Lease ended. Supp. Haddad Decl. ¶ 8.
19 On October 18, Houtan sent Conoco a letter indicating that Houtan
20 had entered into a lease agreement with V.O. Limited for the
21 Station property. Id. ¶ 9; Ex. D. In the same letter Houtan
22 demanded that Conoco sell its improvements and equipment on the
23 Station property to Houtan. Id. Ex. D.

24 On October 22, Conoco sent a letter to Houtan stating that
25 Conoco would sell the improvements and equipment to Houtan for
26 \$340,000 if the offer was accepted by October 29, and if Houtan
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1 paid the full amount by certified check by October 31. Supp.
2 Haddad Decl. Ex. E. Houtan refused to make this payment,
3 believing it to be in excess of fair market value. Id. ¶ 21.

4 On October 31, Conoco sent bulldozers to the premises to
5 begin removal of its equipment and improvements. Id. ¶ 12.
6 Houtan refused to permit Conoco to enter the premises and Conoco
7 subsequently cut off fuel to the Station. Id. ¶ 15. Houtan was
8 able to obtain a fuel supply from another supplier. Pellegrino
9 Decl. ¶ 7.

10 On November 5, Houtan filed a Complaint in this Court seeking
11 damages, injunctive relief, equitable relief and declaratory
12 relief pursuant to the Petroleum Marketing Practices Act ("PMPA"),
13 15 U.S.C. § 2801, et seq. Docket No. 1. On the same day, Houtan
14 also filed an Ex Parte Motion for a Temporary Restraining Order
15 and Application for Preliminary Injunction. Docket No. 3. On
16 November 6 the Court issued a Temporary Restraining Order and
17 enjoined Conoco from taking further action to interfere with
18 Houtan's immediate assumption of control of the Station. See TRO,
19 Docket No. 8. The TRO prevented Conoco from removing any
20 equipment or improvements and compelled Conoco to resume its
21 franchise relationship with Houtan by supplying fuel and
22 processing credit card sales from the Station. Id. On November
23 16, 2007, the Court issued an Order Denying Plaintiff's Motion for
24 Preliminary Injunction ("Preliminary Injunction Order"). Docket
25 No. 18. From all appearances, Houtan continues to maintain
26 control of Conoco's equipment and improvements at the Station
27 property.

1 The Court now turns to the merits of Conoco's Motion for
2 Summary Judgment. The Court notes that much of the analysis from
3 the Preliminary Injunction Motion is directly applicable to the
4 present Motion.⁹

5
6 **III. LEGAL STANDARD**

7 Entry of summary judgment is proper "if the pleadings, the
8 discovery and disclosure materials on file, and any affidavits
9 show that there is no genuine issue as to any material fact and
10 that the movant is entitled to judgment as a matter of law." Fed.
11 R. Civ. P. 56(c). "Summary judgment should be granted where the
12 evidence is such that it would require a directed verdict for the
13 moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250
14 (1986). Thus, "Rule 56(c) mandates the entry of summary judgment
15 . . . against a party who fails to make a showing sufficient to
16 establish the existence of an element essential to that party's
17 case, and on which that party will bear the burden of proof at
18 trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In
19 addition, entry of summary judgment in a party's favor is
20 appropriate when there are no material issues of fact as to the
21 essential elements of the party's claim. Anderson, 477 U.S. at
22 247-49.

23 ///

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26 _____
27 ⁹ Conoco has filed various objections to evidence submitted
28 by Houtan. See Docket No. 102. These objections are overruled.

IV. DISCUSSION

"The PMPA is intended to protect gas station franchise owners from arbitrary termination or nonrenewal of their franchises with large oil corporations and gasoline distributors"

DuFresne's Auto Serv., Inc. v. Shell Oil Co., 992 F.2d 920, 925 (9th Cir. 1993). The PMPA states that if "a franchisor fails to comply with the requirements of section 2802, 2803, or 2807 of this title, the franchisee may maintain a civil action against such franchisor." 15 U.S.C. § 2805.

Houtan, in its Complaint, alleges that Conoco violated PMPA in three respects: (1) terminating the Franchise Agreement without good faith or in the normal course of business, as required by § 2802; (2) failing to give 90 days notice before terminating the franchise, as required by § 2804(a)(2); and (3) failing to make a bona fide offer to sell the equipment and improvements of the Station to Houtan, as required by § 2802(c)(4)(C)(i). See Compl. Conoco moves for summary judgment on all three claims. The Court addresses each in turn.

A. Termination of Agreement

Houtan alleges that Conoco has "wrongfully terminated the Plaintiff's Franchise Agreement and that said termination was not made in good faith and/or in the normal course of business." Compl. ¶ 27. "Section 2802(b)(2) of the PMPA provides several permissible grounds for termination or nonrenewal of a franchise." Hifai v. Shell Oil Co., 704 F.2d 1425, 1428 (9th Cir. 1983). Section 2802 states that "the following are grounds for termination of a franchise or nonrenewal of a franchise: . . . (C)

1 [t]he occurrence of an event which is relevant to the franchise
2 relationship and as a result of which termination of the franchise
3 or nonrenewal of the franchise relationship is reasonable"
4 15 U.S.C. § 2802(b)(2)(C). "Section 2802(c)(4) provides that the
5 term 'event' as used in section 2802(b)(2)(C) includes 'loss of
6 the franchisor's right to grant possession of the leased marketing
7 premises through expiration of an underlying lease.'" Hifai, 704
8 F.2d at 1428 (citing 15 U.S.C. § 2802(c)(4)).

9 In light of the evidence submitted by the parties, the Court
10 concludes that there are no issues of triable fact regarding
11 whether Conoco's termination of the Franchise Agreement was in
12 good faith. Indeed, the evidence demonstrates that the primary
13 reason Conoco terminated the Franchise Agreement was Conoco's
14 inability to renew the Master Lease with V.O. Limited for the
15 Station property. The Franchise Agreement, while providing Houtan
16 with a limited license to use Union 76 trademarks, was primarily a
17 sublease of the Station property by Conoco to Houtan. Because the
18 Master Lease expired, Conoco could not continue to sublease the
19 property to Houtan and there was no way that Conoco could still
20 perform under the Franchise Agreement in the absence of the Master
21 Lease. Thus, there can be no dispute that the termination of the
22 Master Lease was a valid reason for the termination of the
23 Franchise Agreement. See 15 U.S.C. § 2802(c)(4) (stating
24 "termination of the franchise . . . is reasonable . . . [due to]
25 loss of the franchisor's right to grant possession of the leased
26 marketing premises through expiration of an underlying lease . .
27 ."). This does not end the inquiry, however.

1 If the franchisor seeks to terminate the franchise based on
2 the loss of the underlying lease, the franchisor must still adhere
3 to certain statutory requirements. "A franchisor can rely on
4 section 2802(c)(4) to justify nonrenewal only if:

5 [T]he franchisee was notified in writing,
6 prior to the commencement of the term of
the then existing franchise-

7 (A) of the duration of the
underlying lease, and

8 (B) of the fact that such underlying
9 lease might expire and not be
renewed during the term of such
franchise (in the case of
10 termination) or at the end of the
term (in case of nonrenewal)."

11 Hutchens v. Eli Roberts Oil Co., 838 F.2d 1138, 1142-43 (11th Cir.
12 1988) (citing 15 U.S.C. § 2802(c)(4)).

13 In the present case, Conoco has satisfied both of these
14 requirements. As noted above, the Franchise Agreement signed by
15 both parties on July 6 contains the following language:

16 There is a possibility that the term of
17 the underlying lease [the Master Lease]
to the Station might expire and not be
18 renewed upon the underlying lease's
expiration date. DEALER [Houtan] hereby
19 acknowledges CONOCOPHILLIPS' disclosure
to DEALER that this Agreement and the
20 Station herein are subject to all terms
and conditions of an underlying lease
21 held by CONOCOPHILLIPS in the property
and premises, which underlying lease
22 expires on October 31, 2007 and that such
underlying lease may expire and may not
23 be renewed during the Term of this
Agreement. Thereby, the DEALER [Houtan]
24 is hereby on notice that this Agreement
is hereby terminated on the date the
underlying lease expires

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26 Supp. Haddad Decl. Ex. A at 63 (emphasis in original).

27 In addition, Conoco has submitted evidence indicating that it
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1 repeatedly attempted to renew the Master Lease with V.O. Limited.
2 See Mathews Decl. ¶ 5. Furthermore, as Conoco was attempting to
3 renew the Master Lease, Houtan was in contact with V.O. Limited
4 and eventually negotiated a direct lease for the Station property.
5 See, e.g., Eldredge Decl., Docket No. 96, Ex. A (letter from
6 Houtan's president seeking a lease for the Station property, dated
7 April 19, 2007).¹⁰

8 For the foregoing reasons, the Court finds no triable issues
9 of material fact regarding Houtan's claim that termination of the
10 Agreement was not made in good faith. Conoco's Motion for Summary
11 Judgment on this claim is therefore GRANTED.

12 **B. 90-Day Notice of Termination Under § 2804(a)**

13 Conoco also moves for summary judgment on Houtan's claim that
14 the notice provided by Conoco was defective under § 2804(a).
15 Section 2804(a) states, in part:

16 Prior to termination of any franchise or
17 nonrenewal of any franchise relationship,
18 the franchisor shall furnish notification
19 of such termination or nonrenewal to the
franchisee . . . not less than 90 days
prior to the date on which such
termination or nonrenewal takes effect.

20 15 U.S.C. § 2804(a). Houtan argues that because Conoco informed
21 Houtan in writing on September 18 that it would be terminating the
22 franchise Agreement on October 31, Conoco failed to provide the
23 requisite 90-day notice of termination.

24 This argument ignores the fact that Houtan was aware, as
25 early as July 6, that the Franchise Agreement would be terminated

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27 ¹⁰ Jonathan Eldredge submitted a declaration in support of
28 Conoco's Motion.

1 in the event that Conoco was unable to secure a renewal of the
2 Master Lease. More importantly, however, Houtan's argument that
3 the notice did not comply with the 90-day notice requirement of §
4 2804(a) is essentially irrelevant in light of § 2804(b). Section
5 2804(b) provides:

6 In circumstances in which it would not be
7 reasonable for the franchisor to furnish
8 notification, not less than 90 days prior
9 to the date on which termination . . .
10 takes effect, as required by subsection
11 (a)(2) of this section, such franchisor
12 shall furnish notification to the
13 franchisee . . . on the earliest date . .
14 . such notification is reasonably
15 practicable.

16 15 U.S.C. § 2804(b)(1).

17 In the present case, Conoco was unable to renew the Master
18 Lease. On September 18, Conoco sent notice to Houtan indicating
19 that the Franchise Agreement would not be renewed. This qualifies
20 as "the earliest date on which furnishing of such notification is
21 reasonably practicable." Id. Thus, the notice was in compliance
22 with § 2804(b) and was therefore permissible.

23 Such a conclusion is supported by decisions of other courts.
24 See, e.g., Harara v. ConocoPhillips Co., 377 F. Supp. 2d 779, 792
25 (N.D. Cal. April 29, 2005) (finding that "defendant was justified
26 in terminating the franchise with ten days notice"); Murphy Oil
27 USA, Inc. v. Brooks Hauser, 820 F. Supp. 447, 443 (D. Minn. 1993)
28 (stating "14 days notice of termination is not an unreasonable
amount of time" given that plaintiff had failed to pay for
gasoline and rent); Smoot v. Mobil Oil Corp., 722 F. Supp. 849,
855 (D. Mass. 1989) (holding that four weeks was reasonable notice

1 for termination).

2 For these reasons, the Court finds that there are no triable
3 issues of material fact relating to Houtan's claim that Conoco
4 failed to give the requisite notice for termination of the
5 franchise agreement. Summary judgment is therefore GRANTED in
6 favor of Conoco on this claim.

7 **C. Bona Fide Offer Under § 2802(c)(4)(C)(i)**

8 The heart of Houtan's Complaint is that Conoco did not make a
9 bona fide offer to sell Conoco's equipment and improvements on the
10 Station property to Houtan. "When a franchisor decides for
11 legitimate business reasons not to renew a franchise relationship,
12 the franchisor must give the franchisee a bona fide offer to
13 purchase the station." Ellis v. Mobil Oil, 969 F.2d 784, 788 (9th
14 Cir. 1992). Section 2802 of the PMPA states:

15 In a situation in which the franchisee
16 acquires possession of the leased
17 marketing premises effective immediately
18 after the loss of the right of the
19 franchisor to grant possession . . . the
20 franchisor (if requested in writing by
21 the franchisee not later than 30 days
22 after notification was given pursuant to
section 2804 of this title) . . . [shall
make] a bona fide offer to sell,
transfer, or assign to the franchisee the
interest of the franchisor in any
improvements or equipment located on the
premises

23 15 U.S.C. § 2802(c)(4)(C)(i) (emphasis added).

24 In the present case, it is undisputed that Conoco made an
25 offer to sell the equipment and improvements of the Station to
26 Houtan. Houtan argues, however, that the offer was not bona fide
27 because the price that Conoco asked was too high and because

1 Houtan was given only 7 days to accept the offer and only 9 days
2 to make full payment. Conoco, in its Motion, counters by arguing
3 that it was not required to make a bona fide offer in the first
4 place. The Court addresses Conoco's argument first.

5 **1. Whether Conoco Was Obligated to Make Bona Fide**
6 **Offer**

7 Conoco asserts that it was not required to make a bona fide
8 offer to sell Houtan the equipment and improvements on the Station
9 property because Houtan did not request the offer within 30 days
10 of receiving notice that the Franchise Agreement would not be
11 renewed. Conoco argues that the operative date for notice of
12 termination was July 6, not September 18, and that, pursuant to §
13 2802(c)(4)(C)(i), Houtan did not request an offer from Conoco for
14 the equipment and improvements within 30 days of July 6.

15 Conoco's argument is undercut by the language of the July 6
16 Agreement, which merely stated that there was a "possibility that
17 the term of the underlying lease [the Master Lease] to the Station
18 might expire and not be renewed upon the underlying lease's
19 expiration date." Supp. Haddad Decl. Ex. A at 63 (emphasis
20 added). This language did not put Houtan on notice that the
21 Franchise Agreement would necessarily terminate. Rather, it
22 outlined a condition precedent, the occurrence of which would
23 require termination of the Franchise Agreement. At the time the
24 July 6 Agreement was executed, and for the following 30 days, that
25 condition (the termination of the underlying lease) did not occur.
26 It was entirely possible that, up until September 18, a new
27 underlying lease might have been negotiated between Conoco and
28

1 V.O. Limited, in which case the Franchise Agreement would not have
2 terminated. Until September 18, therefore, Conoco had not
3 provided Houtan with notice that the Franchise Agreement would be,
4 rather than eventually might be, terminated.

5 Moreover, the language Conoco used in both its Notice of
6 Termination and its Offer to Sell Improvements indicates that
7 Conoco was aware of its obligations under the PMPA, including that
8 of making a bona fide offer. The September 18 Notice of
9 Termination sent to Houtan stated:

10 Dear Dealer [Houtan]: Conoco[] . .
11 ., pursuant to the requirements of the
12 Petroleum Marketing Practices Act
13 ("PMPA") provides you with this written
14 notice that your franchise relationship
15 with Conoco[] and the above referenced
16 Agreement shall terminate at 12:00 noon
17 on October 31, 2007.

18 The reason for the termination is
19 that the Station you operate is leased to
20 Conoco[] by a third party, and said lease
21 shall expire on October 31, 2007. The
22 existence of an underlying lease was
23 fully disclosed to you.

24 Supp. Haddad Decl. Ex. B.

25 Conoco's Offer to Sell Improvements, sent to Houtan on
26 October 22 in response to Houtan's written letter seeking to buy
27 the improvements, states:

28 Dear Dealer: By hand delivered
letter on September 18, 2007, you were
notified of the Notice of Termination
("Notice") of the Union 76 Dealer Station
Lease and Motor Fuel Supply Agreement . .

. . The reason for the termination is
that, despite [Conoco's] efforts to get
additional tenancy at the Station you
operate, the underlying ground lease
between [Conoco] and the third party

landlord shall expire on October 31, 2007. . . .

You have informed [Conoco] on October 18, 2007[,] that you have obtained a lease with the third party landlord for the station and have requested from [Conoco] a bona fide offer to purchase the improvements and equipment at the Station.

In accordance with the provisions of the Petroleum Marketing Practices Act, 15 U.S.C. Section 2801 et seq., [Conoco] offers to sell you our interest in the improvements and equipment located on the marketing premises.

Id. Ex. E. It is clear from these letters that Conoco itself believed that September 18 was the operative date for the notice of termination and that Conoco believed that it was required to make a bona fide offer on the equipment and improvements. Although Conoco's belief about its obligations under the PMPA at the time the letters were sent is not dispositive to the legal issues now before the Court, it nonetheless provides further evidence that September 18 was in fact the date understood by both parties on which notice of termination was given and that both parties were operating under the assumption that Conoco was required by the PMPA to make a bona fide offer to sell the equipment and improvements to Houtan.

It is therefore clear that on September 18, Conoco provided notice of termination for purposes of Houtan's ability to solicit a bona fide offer to sell. It is also clear that on October 18, Houtan made a written request that Conoco make a bona fide offer to sell Houtan the equipment and improvements on the Station property. As this request was made within the 30-day statutory period of § 2802(c)(4)(C)(i), Conoco was required to make a bona

1 fide offer.

2 For the reasons stated above, the Court finds that Conoco was
3 required to make a bona fide offer to sell the equipment and
4 improvements to Houtan. Conoco's Motion for Summary Judgment on
5 this issue is DENIED.

6 **2. Whether Offer Was Bona Fide**

7 "It is settled law that a bona fide offer under PMPA is
8 measured by an objective market standard." Ellis, 969 F.2d at
9 787. "To be objectively reasonable, an offer must approach fair
10 market value." Id. (internal quotation marks and alterations
11 omitted). Nonetheless, "Congress' decision not actually to use
12 the term 'fair market value' but instead the term bona fide . . .
13 suggests some degree of deference." Slatky v. Amoco Oil Co., 830
14 F.2d 476, 485 (9th Cir. 1987). Thus, in deciding "what manner
15 courts should scrutinize the distributor's offer to determine
16 whether it complies with the requirement . . . [Congress's] choice
17 indicates . . . a recognition that the word 'value' almost always
18 involves a conjecture, a guess, a prediction, a prophesy." Id.
19 (internal quotation marks and citations omitted). Accordingly,
20 "[t]he facts of each case will set the terms of what constitutes a
21 bona fide offer." Ellis, 969 F.2d at 788.

22 In the present case, Conoco has offered to sell its equipment
23 and improvements to Houtan for \$340,000. Supp. Haddad Decl. Ex.
24 E. This price was based on an independent, third-party appraisal
25 prepared by a licensed appraiser. Mathews Decl. ¶ 7; Ex. E.
26 Houtan claims that this amount vastly exceeds fair market value.
27 Houtan's president states that the equipment and improvements are
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1 worth no more than \$120,000. Supp. Haddad Decl. ¶ 22. Houtan
2 also submitted a sworn affidavit from a professional real estate
3 appraiser who appraised the value of the equipment and
4 improvements to be \$145,000. Plaine Decl. ¶ 5.

5 The Court cannot conclude from the evidence before it whether
6 the price contained in the offer by Conoco was bona fide.

7 3. Time of Offer

8 Houtan also argues that the offer was not bona fide because
9 the time period given by Conoco to accept the offer was
10 unreasonably short. Conoco sent a letter on September 18 to
11 Houtan stating that the Franchise Agreement would terminate on
12 October 31 because of Conoco's inability to renew the Master
13 Lease. Supp. Haddad Decl. ¶ 6; Ex. B. On October 16, Houtan
14 entered into an agreement with V.O. Limited to lease the Station
15 property beginning November 1. Id. ¶ 8; Ex. C. On October 18,
16 Houtan sent Conoco a letter indicating that Houtan had entered
17 into this lease agreement and demanding that Conoco sell its
18 improvements and equipment on the Station property to Houtan. Id.
19 ¶ 9; Ex. D.

20 According to these facts, Houtan had notice on September 18
21 that the Franchise Agreement would not be renewed but waited until
22 October 18 to demand an offer for the equipment and improvements.¹¹
23 Although unclear, it appears that Houtan waited these 30 days

24 ¹¹ Section 2802 states that the franchisor must make a bona
25 fide offer only "if requested in writing by the franchisee"
26 15 U.S.C. § 2804(c)(4)(C). Section 2802 also states that this
27 request by franchisee must be made "not later than 30 days after
28 notification was given" Id. In the present case, the
 request was made exactly 30 days after the September 18 letter.

1 because Houtan was negotiating with V.O. Limited to assume the
2 Master Lease of the Station property. Thus, the fact that Houtan
3 had only 7 days to accept Conoco's offer is, in part, Houtan's
4 doing.¹²

5 In addition, Conoco had compelling reasons why it needed to
6 complete the sale of the equipment and improvements before
7 November 1. The Master Lease Conoco has with V.O. Limited was set
8 to expire October 31. In the event that Houtan did not buy the
9 equipment and improvements, Conoco wanted the opportunity to
10 remove its improvements and equipment from the Station before the
11 Master Lease expired. For these reasons the Court finds that,
12 under the circumstances of the case, the timing of the offer had
13 no bearing on whether or not the offer was bona fide.

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26 ¹² On October 22, Conoco sent a letter to Houtan stating that
27 Conoco would sell the improvements and equipment if the offer was
28 accepted by October 29, and paid in full by October 31. Haddad
Decl. Ex. E.

1 **V. CONCLUSION**

2 For the foregoing reasons, Defendant's Motion for Summary
3 Judgment is GRANTED in part and DENIED in part. The only issue
4 remaining in this case is whether the price at which Conoco
5 offered to sell the equipment and improvements to Houtan was bona
6 fide. Depending on whether the offer was bona fide, Houtan may be
7 liable to Conoco for damages resulting from Houtan's continued use
8 of Conoco's equipment and improvements. These issues have not
9 been briefed and are not before the Court at this time.

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12 IT IS SO ORDERED.

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14 Dated: July 21, 2008



15 UNITED STATES DISTRICT JUDGE
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